

Minutes of Special Meeting of December 19, 2011
One Twin Pines Lane AND Northstar-at-Tahoe Lodging Office 100 Northstar Drive
Truckee, CA 96161 (teleconference location of Councilmember Lieberman)

CALL TO ORDER 7:30 P.M.

ROLL CALL

COUNCILMEMBERS PRESENT: Feierbach, Lieberman (via teleconference), Wozniak, Braunstein, Warden

COUNCILMEMBERS ABSENT: None

Staff Present: City Manager Scoles, City Attorney Rennie, Community Development Director de Melo, Finance Director Fil, Public Works Director Oskoui, Human Resources Director Dino, Assistant Finance Director Lazzari, Senior Planner DiDonato, City Treasurer Violet, City Clerk Cook

PLEDGE OF ALLEGIANCE

Led by City Clerk Cook

PUBLIC COMMENTS

Norm Heise, Belmont resident, expressed his concern regarding the manner in which the Mayor and Vice Mayor positions were chosen at the last meeting. He recommended that the City Council review its protocols regarding this issue. He stated that Councilmembers needs to have respect for each other, and that the current Council is petty, divided and lacks civility. He commented that he thought that this behavior was long gone from the City Council.

Perry Kennan, Belmont resident, stated that the City Council does a good job and he disagreed with the previous speaker. He commented that the City Council gets along well and that it is permissible to disagree. He stated that the City rules were followed. He explained that he is still working on transparency for the City's website and that he sent the Sunshine regulations to the City Councilmembers. He requested that more information be made available on the website.

Jeff Selman, Belmont resident, stated that many residents are concerned about many issues. He commented that the perception has arisen that regardless of protocols, actions are a matter of how they are perceived. He requested that the City Council answer the question as to why Councilmember Lieberman was not appointed Vice Mayor.

Mary Beth Kelley, Belmont resident, stated that she is confused about why Councilmember Lieberman was denied the opportunity to be Vice Mayor. She questioned why Councilmember Braunstein was not considered instead. She said that this is a slap to all voters and requested a stop to petty politics. She stated that Councilmember Lieberman is owed an answer.

COUNCIL COMMENTS

Councilmember Feierbach noted that donations to School Force can be made by visiting the Belmont Peet's Coffee Shop.

Councilmember Braunstein stated that he appreciates the public comments made earlier. He noted that he is confused, frustrated and disappointed by the issue raised by the speakers. He stated that just because something is permitted by protocol is not good enough. He noted that the City Council pledges transparency in all matters. He explained that he wants to be proud of his city, but he is not. He commented that the City Council should represent the people, and that the voters elected people they felt had the leadership to do the job. He stated that there is no good rationale for why Councilmember Lieberman was not appointed as Vice Mayor. He commented that petty politics sets a bad example for staff and for people doing business in Belmont. He noted that officials from other cities are questioning what is going on in Belmont. He noted that the reason that he ran for City Council was to stop the infighting. He would like positive press and to raise the level of discourse.

City Attorney Rennie stated that the Brown Act allows brief discussion of matters not on the agenda.

Mayor Warden stated that he has offered Councilmember Lieberman the opportunity to put this matter on the agenda for discussion if desired.

Councilmember Feierbach stated that she has reasons why she did not vote for Councilmember Lieberman, and that she is willing to discuss those reasons if desired.

Councilmember Wozniak stated that she nominated and voted for Councilmember Lieberman when she was first elected in 2007, but she did not vote for him this time. She expressed her willingness to discuss this matter in public, and that this is not just petty politics. She noted that no one nominated Councilmember Braunstein. She explained that the protocols previously provided for a strict rotation which was changed due to an issue with someone not appropriate for rotation.

Councilmember Lieberman expressed his desire to discuss the protocols, and that the public wants and has a right to understand the reasons.

CONSENT CALENDAR

Approval of Minutes of Special and Regular Meeting of November 22, 2011

ACTION: On a motion by Councilmember Feierbach, seconded by Councilmember Wozniak, the Consent Agenda was unanimously approved by a roll call vote.

ADDITIONAL BUSINESS

Consideration of Adjustment to Maximum Rates That May Be Charged By Recology of San Mateo County Under Franchise Agreement for Solid Waste, Recyclable Materials, and Organic Materials Collection Services

Finance Director Fil explained that this matter was discussed at the November 22nd meeting at which time an extension of the December 15th deadline to set new rates was sought. He noted

that staff has had numerous meetings with Recology since the November 22nd meeting, and three alternatives are being provided for Council's consideration, which include the original 22.26 percent increase in rates, an 11.6 percent increase, or service reductions. He described the key features of the second option, which provides for rate smoothing and spreads the impact of the cart migration beyond two years. He noted that this option will require a contract amendment, and will require interest to be paid at prime plus one percent. He explained that the cost to defer the migration cost is approximately \$36,000, or less than one percent.

In response to Council questions, Finance Director Fil stated that other items that affect rates include labor costs, inflation, fuel costs, an increase in the amount of solid waste going to the landfill, and additional cart migration. He noted that ongoing migration is likely to be moderate, not resulting in a huge increase in cost. He explained that the contract always looks backwards regarding migration, and option 2 proposes to skip 2013 and defer the second year of migration to the 2014 rates.

Finance Director Fil also explained that one percent of solid waste revenue is set aside in the Rate Stabilization Fund, which could be used for the 2014 migration impact. He noted that the Fund will have a balance of \$250,000 by that time, and that this would be a good use of the monies. He also pointed out that there has been some migration since June, and that future migration is likely to be better projected.

Councilmember Wozniak suggested surveying customers throughout the year to ascertain which extra services are being used.

Councilmember Feierbach suggested including tabular references for the proposed amendment. She noted that some things are unpredictable. City Manager Scoles stated that the final language can be refined.

Perry Kennan, Belmont resident, noted that the main issue is cart migration. He suggested providing a comparison of solid waste, composting, and recycling levels from the previous year. He stated that it was his understanding that Recology would be replacing carts and he requested clarification as to who would be paying for their replacement. He also requested clarification regarding what is reflected by the \$750,000 figure.

Jeff Selman, Belmont resident, thanked the City Council for its response to questions regarding this matter. He expressed support for Option 2 and recommended inclusion of a senior lifeline rate for the future.

Finance Director Fil clarified that the \$750,000 is the adjustment for migration, and that the franchise agreement regulates revenue.

Mayor Warden noted that less money was collected than was promised under the agreement.

Gino Gasparini, Recology, Inc., explained that the 20-gallon cart was designed by others and

was being redesigned, which will be paid for by Recology.

Finance Director Fil clarified that special counsel advises that lifeline rates cannot be included in the rate structure, and that there are other ways to provide these special rates.

Councilmember Feierbach expressed her support for Option 2.

Councilmember Braunstein expressed concern for delaying the migration costs, and does not support reducing service. He stated he could support Option 2.

Councilmember Wozniak expressed her ongoing support for progressive rates, and could support changes in services provided. She expressed support for the rate smoothing option. She noted that other cities will be dealing with migration every year of the contract rather than the two-year-only adjustment for Belmont.

Councilmember Lieberman expressed his appreciation for the efforts of staff and Recology regarding this issue. He stated that although he has some concern regarding the interest payments in Option 2, it is a reasonable option.

Mayor Warden concurred, and expressed support for future changes in services provided. He also supports the survey as suggested by Councilmember Wozniak. He expressed concern for the 11.6 percent increase and its effect on future rates. He noted that the percentage amount sounds worse than the actual dollar amount. He stated he could support Option 2.

Councilmember Feierbach thanked the residents who wrote to the Council and analyzed the data. She also expressed appreciation for the efforts of City staff and Recology staff.

ACTION: Councilmember Feierbach made a motion, seconded by Councilmember Wozniak, to approve a resolution increasing solid waste rates by 11.6 percent and to authorize the execution of Amendment No. 2 to the Franchise Agreement with Recology.

Councilmember Wozniak requested that the motion be amended to include a future survey of solid waste customers to assess what services are being used. Mayor Warden stated that he would support a survey if it had a minimal cost.

City Manager Scoles requested an amendment to the motion to include the authority for the City Manager to make minor modifications to Amendment No. 2 that do not materially affect the maximum rates.

Councilmember Feierbach accepted both amendments.

ACTION: On the original motion, Resolution 10455 Increasing Solid Waste Rates by 11.6 percent and Authorizing the City Manager to Execute Amendment No. 2 to the Franchise Agreement with Recology, was unanimously approved by a show of hands, said motion to

include a future survey of solid waste customers to assess what services are being used, and to give authority to the City Manager to make minor modifications to Amendment No. 2 consistent with the intent of the Amendment and that do not materially affect the maximum rates.

Public Hearing to Consider an Appeal of the Planning Commission Decision Approving a Single Family Design Review for Property Located at Vacant Lot on Alhambra Drive, APN 043-232-080 & 043-232-230 (Continued from November 22, 2011)

Mayor Warden noted that although the Public hearing was closed on November 22nd, additional public testimony can be taken.

City Attorney Rennie confirmed that because this is a special meeting, the public is allowed to comment.

Councilmember Wozniak noted that she received a campaign contribution from the appellant. She clarified that she conferred with City Attorney Rennie and the Fair Political Practices Committee (FPPC), both of which indicated that there are no restrictions since she is an elected official. She explained that if she were an appointed official, the ruling would be different.

Senior Planner DiDonato described the project, including site plans, tree removal, and grading, and noted that the project involves vacation of right-of-way. He stated that the project conforms to the General Plan and the San Juan Hills Area Plan (SJHAP). He outlined the issues raised by the appellant. He clarified that the Planning Commission found the project to be compatible with the neighborhood. He explained that the site is geotechnically stable in that it is located in the “Ps” (potential shallow landslide failure) zone which is more stable than the “Pd” (potential deep landslide failure) zone as alleged by the appellant.

Senior Planner DiDonato stated that extensive analysis was provided to affirm that the proposed project conforms to the General Plan and SJHAP. He explained that the project is not a subdivision but represents a consolidation of lots. He noted that the appellant erroneously applied the intensity analysis, and that staff used the notification radius for comparative purposes. He explained that the proposed home is half the floor area of the average home in the survey group. He noted that the SJHAP does not prohibit development in slopes over 30 percent.

Senior Planner DiDonato clarified that the City Council is considering design review only, and that the floor area transfer, the vacation of right-of-way, and the lot line adjustment are not matters before the City Council at this time. He stated there is a benefit to vacating the right-of-way. He explained that the single family design review standards can all be made in the affirmative, and he clarified that if approved, other entitlements would be brought to the City Council for future consideration.

City Attorney Rennie clarified that the only item that will be decided by the City Council would be the vacation of the right-of-way. He noted that design review assumes the vacation, and that the City Council will have the opportunity to analyze those findings.

City Councilmembers disclosed their ex parte communications. Councilmembers noted that they had not had any recent contact with the appellant regarding this matter.

Mayor Warden reopened the Public Hearing.

Judy King, speaking on behalf of Jack and Maryellen Langley, Belmont residents, read a letter from the Langleys in which they described being asked by the appellant to sign a petition to address growth. They noted that the appellant advised them that Mayor Feierbach was in favor of the petition. The Langleys noted that their daughter, who lives next door, also signed the petition. The Langleys indicated that they subsequently learned that the petition was against an existing approved project, and was not about growth in the Canyon. They made arrangements to have their name removed from the petition. They noted that another neighbor was asked to sign the petition because he was told that the General Plan was not followed regarding grading for the project.

Tim Robertson, Co-Appellant, commended staff for its factual analysis of this project. He noted that some issues regarding this proposed development are discretionary. He noted that he and the other co-appellants are opposing the project because it sets precedence. He explained that this is the last development on one end of unimproved Monte Cresta Way, and that another proposed project being planned for the other end of Monte Cresta Way. He expressed concern that these developments will result in the full development of Monte Cresta Way.

Joe Betts-Lacroix, Co-Appellant, concurred with the previous speaker's comments that not all of the findings to be made are factual. He noted that this site is not an appropriate place to build.

Councilmember Feierbach requested clarification from Mr. Betts-Lacroix regarding what he told the Langleys about her position on this appeal. Mr. Betts-Lacroix clarified that he told Mr. Langley that the project was inconsistent with the SJHAP, and that Councilmember Feierbach was one of the authors of the plan. He further clarified that he did not advise Mr. Langley that Councilmember Feierbach was in favor of the appeal.

Jeff Rice, Project Applicant, stated that he and the property owners were advised that this was a buildable lot, and a loan was obtained based on that advice. He noted that each home in the neighborhood is subject to the same development process, and they have done everything that has been asked of them. He stated that the appellants could have purchased the property if they wanted it to remain open space. In response to Councilmember Feierbach, Mr. Rice clarified that the project is estimated to take 21 months which is not unusual for a project of this scope.

Joel Baldwin, Earth Investigations, geologic consultant for project, stated that he has conducted many investigations in the area over the past 30 years. He confirmed that this lot is not zoned "Pd", and that recommendations have been made to minimize grading and tree removal.

Eugene Tan, subject property owner, stated that he is not a developer. He clarified that the existing oak trees will not be touched and will be restored. He explained that it is his desire to

adhere to all ordinances governing this development.

ACTION: On a motion by Councilmember Wozniak seconded by Councilmember Feierbach, the Public Hearing was unanimously closed by a roll call vote.

Councilmember Feierbach noted that some findings are subjective. She stated that bulk is the biggest issue, and excavation is the most subjective. She explained that she can make all the findings. She commented that she has always been protective of the San Juan Canyon. She noted that there are some lots in the Canyon that should not and will likely never be developed. She urged the applicant to maintain good communication with the neighbors regarding the status of the project.

Councilmember Lieberman stated that this is likely as good a house as could be built on this property. He noted that the applicant has the right to build, and he commented that they have been conscientious in the design of the home.

Councilmember Wozniak commented that this is a difficult lot and contains an unstable gully. She noted that if the City did not have a 900 square foot minimum, the likely home size would be 450 square feet. She stated that the house takes up a good portion of the visible portion of the lot. She explained that she can make all the findings based on the application of the law. She noted that this is a quality home, and that some homes in the area are bigger than the proposed home.

Councilmember Braunstein stated that others have built on similar lots in the region. He noted that this project has been analyzed thoroughly, and he concurred that the findings can be met.

Mayor Warden stated that Planning Commission appeals are difficult. He commented that this project is a poster child for the lot merger program. He stated that the applicant has followed the law and that the findings can be made. He expressed concern regarding the bulk and grading, and noted that the City cannot deny the right to build.

Councilmember Feierbach stated that she has always been protective of the San Juan Canyon. She noted that there are some lots in the Canyon that should not and will likely never be developed. She urged the applicant to have good communication with the neighbors throughout the project.

ACTION: On a motion by Councilmember Wozniak, seconded by Councilmember Feierbach, and unanimously approved by a roll call vote to adopt Resolution 10456 Upholding the Planning Commission Decision Approving a Single Family Design Review for Property Located at Vacant Lot on Alhambra Drive, APN 043-232-080 & 043-232-230, amended to require that the lot line adjustment and right-of-way vacation issues be returned to the City Council for consideration.

RECESS: 9:40 P.M.
RECONVENE: 9:45 P.M.

Approval of Draft Response Letter Regarding High Speed Rail Business Plan

Community Development Director de Melo stated that the comment period for the High Speed Rail Business Plan was extended to January 16, 2012. He stated that a new draft letter was provided by Councilmember Wozniak, which was also shared with the High Speed Rail Ad Hoc Committee. He explained that the Committee had reviewed the original draft of the letter.

Mayor Warden stated that this item could be agendaized for January.

Councilmember Wozniak noted that the Ad Hoc Committee was formed to provide information to the community, not to direct policy. She clarified that it is often difficult to reach consensus in a large committee such as this. She explained that the first draft was an effort to address Cal Train's survival and it is time for the City of Belmont to take a stronger position. She point out that other cities have already written letters or will be addressing this matter in early January.

George Burgess, Belmont resident, stated that the Ad Hoc Committee took a position regarding the impact to Belmont and did not attempt to address the statewide High Speed Rail Authority. He noted that the revised draft letter does not provide facts to support Belmont's position.

Kristin Mercer, Belmont resident, thanked the City Council for analyzing the impact of high speed rail on the City of Belmont and for spending considerable time on this topic. She acknowledged that Councilmembers Wozniak and Feierbach attended the High Speed Rail Ad Hoc Committee meeting wherein this matter was discussed in detail. She stated that she wrote her own personal letter regarding this topic which she forwarded to many elected representatives, and she clarified that she had no part in drafting the City's official letter. She stated that the City's letter should reflect the position of the City Council on this matter, and should address how high speed rail would impact the community.

Councilmember Feierbach stated that she would like to see other cities' letters, and she expressed concern regarding some of the verbiage in the proposed draft letter. She expressed her desire that the City of Belmont's letter be professional.

Mayor Warden stated that he is willing to help redraft the letter after speaking to various stakeholders, and to bring a new draft back to the City Council for further consideration.

Councilmember Wozniak stated that Cal Train is important and needs to be decoupled from high speed rail. She expressed her desire that the letter be strong in its message. She noted that the High Speed Rail Authority claims that high speed rail will mitigate air traffic and the need for road improvements. She explained that the installation of high speed rail without addressing local transit will continue to have an impact on local roads and associated costs.

Councilmember Braunstein expressed concern regarding the cost of high speed rail and the proposed ridership data. He stated that high speed rail should provide linkage to public transportation, and there is a need for better communication from the High Speed Rail Authority.

Councilmember Lieberman stated that he has not had a chance to review the new draft letter, and expressed a desire that the letter focus on Belmont's interests and be supported by facts.

Council concurred to have Mayor Warden work with stakeholders and staff to prepare a new draft letter for Council's consideration.

ADJOURNMENT at this time, being 10:15 P.M.

**Terri Cook
City Clerk**

Meeting Tape Recorded and Videotaped
Audio Recording 804